IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6915 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NASIR JANMOHAMMED SANDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. S.T. Mehta, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 10/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel on behalf of the petitioner and learned A.G.P. Mr. S.T. Mehta for the respondents nos.1,2 and 3.

1. The detention order dated 12-4-1999 passed by the respondent no.2-Commissioner of Police, Rajkot City, against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985 (" PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that two Prohibition Cases bearing CR no.9/99 and CR no.7/99 were registered against the petitioner at Malavianagar Police Station, Rajkot and Taluka Police Station, Rajkot respectively on 17-1-1999. That in each case, Indianmade foreign liquor has been seized from the possession of the petitioner and matters are pending for trial in Court.

The grounds further indicate that two witnesses on assurance of their anonymity have given statements dated 6-4-1999 and 8-4-1999 respectively against the petitioner in respect to alleged incidents dated 3-1-1999 and 13-12-1998 respectively.

3. That in consideration of the aforesaid material the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of "PASA". That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activities, and thereby in order to prevent the petitioner from continuing his such activities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds.It has been submitted on behalf of the petitioner at the Bar that though the criminal case against the petitioner is registered on 17-1-1999, the impugned order of detention has been passed on 12-4-1999 and the undue delay has not been explained, and as such, on account of inordinate delay in taking the impugned action, the subjective satisfaction reached by the detaining authority stands vitiated, thus rendering the impugned order invalid.

It is also contended that before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy of opposing and claiming cancellation of bail available under Section 437(5) of the Cr.P.C.. Thus, on account of non application of mind also, the subjective satisfaction

arrived at by the detaining authority while passing the order of detention stands vitiated and the order of detention is invalid and bad in law.

5. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS. (AIR 1994 SC 656), the Supreme Court having considered the earlier authority in the case of T.A. ABDUL REHMAN VS. STATE OF KERALA (1989(4) SCC 741) = (AIR 1990 SC 225) has observed that the prejudicial activity of a person necessitating the passing of an order of detention is proximate in time when the order is made or the live link between the prejudicial activity and the date of detention is snapped depends on the facts and circumstances of each case. However, the detaining authority has to satisfactorily examine such delay and afford a tenable reason as to why such a delay has occurred. If no reasonable explanation is forthcoming then such delay is fatal to the validity of the detention order. The same proposition has been reiterated by this Court in the matter of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381) after considering the various authorities of the Supreme Court.

6. In the instant case also, the impugned order does not disclose any reasonable explanation as to why the impugned order has been passed on 12-4-1999 despite the registration of the last Prohibition Case against the petitioner-detenu on 17-1-99. That the statement of witnesses also disclose the incident which could be said to be stale and not proximate in time to the impugned action. None of the respondents have filed any affidavit. There is no explanation on record to explain such inordinate delay in taking impugned action on the basis of material which was available in January, 1999.

7. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. (1995(2) G.L.R. p.1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5) of the Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court(Coram: C.K. Thakkar & A.L. Dave,JJ.).

8. In the instant case also, the detaining authority has merely observed in paragraph 7 that the detenu having got himself released on bail in the criminal cases registered against him is likely to continue his antisocial activity and as there is no alternative,

detention order under Section 3(1) of "PASA" is necessary. The said ground is devoid of any explanation or suggestion whether the detaining authority has considered availability of less drastic remedy to prevent the petitioner-detenu from continuing his prejudicial activity, and as such, I am constrained to hold that on that count also, the order is invalid.

9. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide, the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The order of detention dated 12-4-1999 passed by the respondent no.2-Commissioner of Police, Rajkot City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Nasir Janmohammed Sandhi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute to that extent.

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